

Should protecting the anonymity of victims of sexual offences be left to the media?

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Crime analysis: The Court of Appeal has restated the law relating to the protection of the anonymity of victims in criminal cases. Kirsten Sjøvoll, barrister at Matrix Chambers, considers whether the court may be placing too much trust in the media in upholding complainants' anonymity when it may still make commercial sense to run a story at the risk of a fine.

Original news

R (Press Association) v Cambridge Crown Court [2012] EWCA Crim 2434, [2012] All ER (D) 267 (Nov)

The Court of Appeal (Criminal Division) held there was no power which vested a judge with jurisdiction to make an order that a defendant should be given anonymity, even when the purpose of the order was to protect the anonymity of the complainant.

What issues does this case raise?

The key issue here is whether the crown court judge had the power to issue an anonymity order to stop the publication of information that could have led to the anonymity of the complainant (a rape victim) being breached.

It is an interesting analysis of how effective the protection relating to the anonymity of complainants in criminal cases is, and whether there needs to be greater control over 'jigsaw identification' in newspaper reporting.

Was an appeal by the Press Association surprising?

I don't know of many criminal cases in which the Press Association has appealed. There have been cases where media outlets have raised complaints about anonymity orders, but judges tend not to make orders as the judge did in this case.

I am not surprised the Press Association appealed. The trial had been held in open court with no reporting restrictions and the defendant's full name had been included in the court listings. No anonymity order had been sought up until the point of sentencing.

What is the legislative framework behind the prohibition of publication of information that could lead to the identification of the complainant?

The anonymity of victims exists by virtue of statute. The judgment is essentially stating the obvious. Under the Sexual Offences (Amendment) Act 1992 all victims of sexual crime are given lifelong anonymity, but there is no inherent jurisdiction of behalf of the judge to grant an order expressing the anonymity of the complainant.

The only criminal sanction for revealing complainant identity is financial. Some newspapers may weigh up commercial benefit versus financial risk and conclude that they should publish details which may lead to identification of the claimant.

One can sympathise to a degree with the judge in the crown court; he was clearly concerned there was a real risk to the anonymity of the victim. It is questionable what use the order would have been anyway even if it had been upheld, given that the crown court proceedings were entirely open.

Does the judgment have any implications for press reporting restrictions?

It is obviously a strong judgment in favour of leaving the protection of the victim's anonymity in the care of the media. The Court of Appeal in its decision places a lot of trust in the media--perhaps too much trust, in my opinion--not to do anything that could lead to the identification of the complainant. The media should bear in mind that individual facts in cases should not be overlooked. The judgment does state there may be instances where reporting restrictions and anonymity orders in relation to the defendant's name would be appropriate, though that did not apply in this case.

Are jigsaw identifications a problem and are the current protections fit for purpose?

There have been quite a few PCC complaints upheld against regional newspapers regarding jigsaw identifications in recent years; for example, a complaint was made that information along with a photo published in a Staffordshire paper of a man who had been committed of sexual abuse could have led to the victim being identified, because there were connections between the accused and the victim. These occurrences are probably more common than one might think if you consider that most sexual offences are committed by people known by the victim, so a connection is much more likely to be identifiable.

The press has to be careful and they are obliged by statute not to do anything that could lead to identification, but I am a little bit sceptical as to whether the risk is sufficiently minimised under the current system. As mentioned above, breaching the Sexual Offences (Amendment) Act 1992, s 1 is punishable only by a fine--and once something has been published, the damage is done. The Court of Appeal said in its judgment that urgent attention needs to be given to the amount of penalties as they currently stand.

What best practice advice could you offer for those involved in proceedings where complainant identification is a problem?

If there is a real risk of the complainant being identified, then prosecuting or defending lawyers should raise the matter with the judge as early as possible and ask for direction. Even though a judge does not have the power under statute to make an anonymity order to protect the complainant's identity, he or she is entitled to, and indeed should, give clear direction to the press to flag up if there is a link between the complainant and defendant, and to make them aware of their reporting obligations.

Lawyers should also pay close attention to any evidence being adduced that could link to the complainant's right to anonymity. There are of course additional safeguards that already exist in criminal proceedings which should be considered: the complainant can give evidence behind a screen, for example, or the judge can order reporting restrictions on certain days of the trial.

What should lawyers be doing next?

There is not a great deal lawyers can do in relation to complainant anonymity; it is upheld by statute and as this judgment makes clear, it is for the media to maintain. As stated above, there is not a massive financial deterrent against the media lifting anonymity and in this respect prevention is better than the cure. Lawyers should be paying more attention to anything that could reasonably identify the complainant and ensure the press is made aware of it.

Interviewed by Duncan Wood.

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